

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES and SHAYLEE MEDICRAFT,
husband and wife and the marital community
thereof, themselves and on behalf of their minor
children: J.M., A.M., E.M., M.M. and N.M.,

Plaintiffs,

v.

PHOENIX PROTECTIVE CORP., et al.,

Defendants.

NO. 2:21-cv-01263-BJR

ORDER REGARDING WITNESS
KATHLEEN MCCLELLAN

THIS MATTER came before the court on March 15, 2023, to address discovery disputes between the parties. Plaintiffs and Defendant Phoenix Protective Corp. met and conferred multiple times to address Phoenix's attempt to depose Ms. Kathleen McClellan. The parties jointly submitted the following synopsis regarding the dispute:

Included in Plaintiffs' claims is an allegation that a Phoenix security guard assaulted A.M. on February 6, 2020. This allegedly occurred in a DCYF office while a number of parties were in a nearby room for a meeting related to the ongoing dependency action involving the Medicrafts and the State. Those at the meeting heard a commotion and went out to the lobby to see an incident involving Phoenix guards and A.M., J.M., and E.M. Present for that meeting and understood to be a partial witness to what occurred in the lobby was Ms. Medicraft's attorney, Kathleen McClellan. Phoenix seeks to depose Ms.

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McClellan solely as to what she witnessed concerning this incident—Phoenix does not seek to question Ms. McClellan regarding any matter that would otherwise be protected by attorney-client privilege. Ms. McClellan has indicated that she would refuse to answer questions, citing RPC 1.6. Phoenix seeks a court order to authorize Ms. McClellan’s testimony on this subject matter pursuant to RPC 1.6(b)(6). Ms. McClellan has informed counsel that she consulted with the WSBA ethics hotline. Other witnesses to the event include Mrs. Medcraft, A.M., Jennifer Watts (who testified about the incident at the dependency), the accused security guard, among others.

Ms. McClellan has informed counsel of her objection to being deposed, relying on RPC 1.6. Ms. McClellan was not present or represented at the March 15, 2023, hearing.

THE COURT having reviewed and considered the court file, and having heard argument of the parties, and being otherwise fully advised in the matter, hereby GRANTS Defendant Phoenix’s motion and ORDERS that Ms. McClellan sit for a deposition and answer under oath questions related to any alleged incident she may have witnessed on February 6, 2020, involving the Medcraft family and employees of Phoenix Protective Corp. Plaintiffs have alleged that one or more minor Medcraft children were assaulted by security guards and the Court concludes that facts related to what Ms. McClellan may have witnessed of any such encounter does not fall under RPC 1.6’s prohibition that “[a] lawyer shall not reveal information relating to the representation of a client.” Further, to the extent that testifying to the facts related to a witness account would “reveal information relating to the representation” of Ms. Medcraft, the court orders that Ms. McClellan do so pursuant to RPC 1.6(b)(6). Ms. McClellan’s testimony shall be contained to the February 6, 2020, incident involving allegations of a Phoenix Security Guard assaulting a minor child and will not constitute a waiver of any attorney client privilege.

ORDERED this 6th day of June 2023.



Barbara J. Rothstein
United States District Judge

Presented by:

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By: /s/ Jesse C. Williams

Eron Z. Cannon, WSBA #42706
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Counsel for Defendant Phoenix Protective Corp

Approved as to Form:

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By: /s/ Nathan J. Arnold

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Counsel for Plaintiffs

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